IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 42 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MOHANBHAI N PATEL

Appearance:

1. INCOME TAX REFERENCE No. 42 of 1995
MANISH R BHATT for the applicant
NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred following question of law for our opinion in respect of Assessment Year 1988-89 :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in allowing separate deduction of 50% of incentive bonus as expenses, while the incentive bonus is taxable under head of salarie and dismissed the departmentas and the expenses for earning salary including bonus are covered by deduction under section 16(i) of the I.T.Act ?"

2. The assessee is an individual. He is a Development Officer of LIC of India. He was paid incentive bonus with a view to meeting the expenses that might be incurred by him as a Development Officer for discharge of his duties. During the course of assessment proceedings, the assessing officer held that the claim of 50% of expenses from the incentive bonus commission was not admissible. On appeal, C.I.T.(appeals) following its own decision in the case of Shri P.V.Ashar directed the I.T.O. to allow 50% expenditure out of incentive bonus as admissible deduction and recompute the total income accordingly. On further appeal, the Tribunal has confirmed the decision of C.I.T.(A) and dismissedd the department's appeal.

3. Though the respondent is served, no one has appeared on his behalf.

4. We have heard the learned counsel for the Revenue. The learned counsel for the Revenue states that the controversy raised in the present Reference is answered by the Division Bench of this Court in Commissioiner of Income-tax v. Kiranbhai H. Shelat & another, (1999) 235 ITR 635.

5. In the above referred to decision, the Division Bench of this Court has held that portion of incentive bonus actually spent by the Development Officer does not constitute salary, but as L.I.C. has proposed to certify 30% of incentive bonus earned as necessary expenses that would have to be incurred, the maximum limit of deduction allowable is 30%. In view of the decision of the High Court quoted above, we are of the opinion that the Tribunal was right in law in allowing separate deduction of expenses out of incentive bonus, but deduction

allowable would be upto the maximum limit of 30%. Therefore, we hold that the Appellate Tribunal was right in holding that the assessee was entitled to deduction of expenditure out of incentive bonus, but the maximum limit of the same would be 30%. Therefore, to the extent of 30%, Reference is answered in favour of the assessee and against the Revenue.

The Reference accordingly stands disposed of, with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah, J.)

(patel)